IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16996 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARENDRABHAI JETHABHAI VASAVA

Versus

LAKHABHAI JETHABHAI VASAVA

Appearance:

1. Special Civil Application No. 16996 of 2004

MR PRITESH L PARIKH for Petitioner No. 1

MR PANKAJ A KAPADIA for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 01/03/2005

ORAL JUDGEMENT

1. The petitioner herein has challenged the order dated 01/12/2004 passed by the learned Assistant Judge, Bharuch, in Misc. Civil Appeal No.59 of 2004, whereby the appeal was allowed and the order dated 21/07/2004 passed by the learned Civil Judge (J.D.), Jhagadia, in Regular Civil Suit No.21 of 2004 was quashed and set

aside.

2. I have heard learned counsel for the parties and have perused the relevant documents on record. The Appellate Court has rightly observed that the original owner - Rameshchandra Patel, had a right to transfer / sell the suit land in question only after making the payment of the loan. Therefore, before the payment of the loan, the contract entered into between the original owner and the petitioner herein cannot be said to be legal and valid in the eye of law. In my opinion, the reasonings given by the Appellate Court in Para 9 of its judgment are just and proper.

3. Moreover, it is to be noted that the law on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution of India is already settled by the Supreme Court. In the case of Surya Dev Rai Vs. Ram Chander Rai, reported in (2003)6 SCC 675, the Supreme Court has observed that while examining a petition under Article 227 of the Constitution of India, a writ of certiorari or the exercise of supervisory jurisdiction is not available to correct mere errors of fact or of law, unless the error is manifest and apparent on the face of the proceedings, such as, when it is based on clear ignorance or utter disregard of the provisions of law and a grave injustice or gross failure of justice has occasioned thereby. The Supreme Court further observed as under:

> "The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdiction is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction

> at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis."

4. The aforesaid principles have been reiterated by the Supreme Court in the case of Yashwant Sakhalkar Vs. Hirabat Kamat Mhamai, reported in (2004)6 SCC 71, and in he case of Ranjeet Singh Vs. Ravi Prakash, reported in AIR 2004 SC 3892.

5. In view of the above, I am of the opinion that the Appellate Court has not committed any error which would call for interference of this Court under Article 227 of the Constitution of India. However, it will be open for the petitioner to apply before the trial Court for clearing the dues of the Bank. If the dues of the Bank are cleared and if the directions issued by the Appellate Court in Para 9 of its judgment are complied with by the petitioner, the trial Court shall re-consider the application of the petitioner as regards the protection of the possession of the petitioner.

6. With the above observations and directions, the petition stands disposed. Direct service permitted.

(K. S. JHAVERI, J.)

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